

07 -- Executive Department

102 -- Office of the Governor

Chapter 101 Establishment of the Capital Investment Fund

Summary: This chapter establishes the process to be used in the determination of the amount of the Capital Investment Fund (CIF), as defined in 2 MRSA § 103. This rule specifies the manner in which a value for the Fund will be calculated ~~each year~~, how that amount will be allocated between hospital and non-hospital projects as well as large and small projects subject to review under Maine's Certificate of Need Act and rules. ~~It also describes the manner in which the input regarding the number will be solicited, obtained and considered.~~ Beginning January 1, 2010, the CIF will be determined once every three years, and the CIF will have a three year effective period.

1. Definitions. For the purpose of this chapter, the following definitions shall apply.

~~A. Advisory Council on Health Systems Development. "Advisory Council on Health Systems Development" means the council established in accordance with 5 MRSA §12004-I and described in 2 MRSA c. 5 §104.~~

~~B. Annual Effective Period. "Annual effective period" means the period covered by the Capital Investment Fund. Such periods will ordinarily run for a 12-month period of time, coinciding with the state fiscal year.~~

~~A. C. Capital Costs. "Capital costs" means costs that under generally accepted accounting principles are not properly chargeable as an expense of operation and maintenance and includes capitalized interest on borrowed funds and the fair market value of any property or equipment that is acquired under lease or comparable arrangement or by donation.~~

~~B. D. Capital Investment Fund. "Capital Investment Fund" (CIF) means the limit on resource expenditures that may be made as part of any hospital or non-hospital project, which is established on an annual basis pursuant to the provisions of this chapter.~~

~~C. CIF Debit. "CIF Debit" means the debit against the CIF for a given project. The CIF debit for a project shall be the third year operating costs of a project deflated to dollars of the year in which the project is approved using the inflation calculation for interest expense and operational expenses as reflected in the worksheets filed by the applicant as part of the CON application.~~

~~C.D. E. Department. "Department" means the Maine Department of Health and Human Services.~~

~~D.E.~~ E. ~~Effective Period.~~ “Effective period” means the three-year period to be covered by the Capital Investment Fund. Such periods will begin on January 1st, coinciding with the Certificate of Need Unit’s review cycles. The first Effective Period shall begin January 1, 2010.

~~F.~~ F. ~~Extraordinary Project.~~ “Extraordinary project” means a project subject to review under the Maine Certificate of Need Act with approved third year capital and operating costs in excess of \$2,000,000.

~~E.F.~~ G. ~~Hospital Component.~~ “Hospital component” means that portion of the Capital Investment Fund specifying the level of capital and operating costs that may be approved by the Department under the Maine Certificate of Need Act and rules for hospital projects.

~~F.G.~~ H. ~~Hospital Large Project Amount.~~ “Hospital Large Project Amount” means the portion of the Hospital Component that that shall be reserved for large projects.

~~G.H.~~ I. ~~Hospital Project.~~ “Hospital project” means a project that is being proposed by or on behalf of a hospital, as defined at 22 MRSA section 328(14), and that relates to facilities, services or equipment, that is subject to review and approval under the Maine Certificate of Need Act and rules.

~~H.I.~~ J. ~~Hospital Small Project Amount.~~ “Hospital Small Project Amount” means the portion of the Hospital Component that shall be reserved for small projects.

J. ~~Large Project.~~ “Large project” means a hospital or non-hospital project with ~~third year operating costs a CIF debit~~ greater than or equal to ~~\$500,000.~~ \$1.2 million and capital costs greater than or equal to \$15 million. Beginning January 1, 2009 and annually thereafter, the numbers in this subsection shall be revised to correspond to changes in the Consumer Price Index medical index in conjunction with other monetary figures contained in 22 MRSA Chapter 103-A.

~~J.K.~~ K. ~~Non-hospital component.~~ Non-Hospital Component. “Non-hospital component” means that portion of the Capital Investment Fund specifying the level of capital and operating costs that may be approved by the Department under the Maine Certificate of Need Act and rules for non-hospital projects.

~~K.L.~~ L. ~~Non-Hospital Large Project Amount.~~ “Hospital Large Project Amount” means the portion of the Non-Hospital Component that that shall be reserved for large projects.

~~L.M.~~ M. ~~Non-hospitalHospital Project.~~ “Non-hospital project” means a project that is being proposed by or on behalf of a health care facility as

defined in 22 MRSA section 328(8), other than a hospital, that is subject to review and approval under the Maine Certificate of Need Act and rules.

~~M.N.~~ Non-Hospital Small Project Amount. “Hospital Small Project Amount” means the portion of Non-Hospital Component that shall be reserved for small projects.

~~N.O.~~ L.—Office. “Office” means the Governor’s Office of Health Policy and Finance or its successor.

~~O.P.~~ M.—Operating Costs. “Operating costs” means the total non-capital incremental costs attributable to a project approved in accordance with the Maine Certificate of Need Act and rules.

~~P.Q.~~ N.—Small Project. “Small project” means a hospital or non-hospital project ~~with third year operating costs less than \$500,000. that is not a large project.~~

~~Q.R.~~ O.—State Health Plan. “State Health Plan” means the plan developed and issued by the Governor pursuant to 2 MRSA c.5, section 101.

~~R.S.~~ P.—Total Costs. “Total costs” means the third year capital and operating costs associated with a hospital or non-hospital project.

~~S.T.~~ Transition Period. “Transition period” means the period covering Certificate of Need reviews from January 1, 2009 through December 31, 2009.

2. Responsibility for Determining Capital Investment Fund Amount. The Office shall establish a Capital Investment Fund for ~~the transition period and each annual~~three year effective period, pursuant to the process specified in this rule. Each Capital Investment Fund shall include allocations for both hospital and non-hospital projects, shall reflect the goals of health care cost containment, improvement of health care quality and outcomes and improvement of appropriate access to health care services and shall reflect the guidance provided in the State Health Plan.

3. Process for Determining Capital Investment Fund
~~The Office shall determine a Capital Investment Fund for each annual effective period as specified below:~~

~~A.~~—The Office shall calculate a starting value for the Capital Investment Fund as follows:

- ~~(1) The Office shall determine the average total third year capital and operating costs of those hospital projects approved in accordance with the Certificate of Need Program in the five year period beginning six years prior to the outset of the annual effective period. This means in the annual effective period for 2004, the average for the years 1999, 2000, 2001, 2002 and 2003 shall be determined. In the case of extraordinary projects, a maximum of \$2,000,000 in third year capital and operating costs shall be recognized in the year in which project approval was granted, with the balance of those costs allocated over subsequent years. In no case shall the allocated balance of such costs exceed \$2,000,000 in any one year. All dollar figures will be trended for inflation using the values for annual percentage growth in the cost of hospital care published by the Office of the Actuary, Centers for Medicare and Medicaid Services, US Department of Health and Human Services in *Health Affairs-Web Exclusive*, W4-79, 2004. These values are presented below:~~

2001	2002	2003	2004	2005	2013
5.5%	9.5%	6.5%	6.5%	6.2%	6.0%

~~Each of these values indicates the percentage growth over the previous year shown. In the case of 2001, the percentage shown indicates the growth over a base year of 1998. When inflating dollar values from 1999, the inflation figure for 2001 shall be used; when inflating dollar values past the year 2005, the inflation figure for 2013 shall be used.~~

- ~~(2) The five year average third year operating and capital costs calculated above shall be adjusted for differences between the average cost per discharge, adjusted for variations in wages and case mix. This adjustment shall be made as follows:~~
- ~~a) The five year average computed in subsection (3)(A)(1) shall be multiplied by the percentage value of the proportion of hospital inpatient revenue to total hospital revenue. The percentage value used shall be derived from historical data corresponding to the years used to calculate the average total third year capital and operating costs in subsection (3)(A)(1) trended forward to the annual effective period. The historical data used shall be taken from the audited financial reports for each Maine hospital, exclusive of revenue associated with any related entities or subproviders, filed with the Maine Health Data Organization pursuant to the requirements of 22 MRSA chapter 1683, §8706. If such data are not available for a given hospital, data from the hospital's Medicare cost report, as filed with the Maine Health Data Organization pursuant to 22 MRSA chapter 1683 §8706, shall be used instead. Trending shall be accomplished using a simple trend analysis, using the formula shown below:~~

$$y = mx + b$$

~~where m is the slope of the line and b is the y intercept of the line.~~

The product of this calculation represents the share of the average third year capital and operating costs allocated to inpatient services.

- ~~(a) The product calculated in (2)(a) shall be adjusted for differences between the average cost per discharge, adjusted for variations in wages and case mix, in Maine and New England. This adjustment shall be made using the most recent year's data included in the most recently published edition of *The Almanac of Hospital Financial and Operating Indicators*, published annually by Ingenix; a copy of this document may be accessed through the Office.~~
- ~~(b) The outpatient portion of the average third year capital and operating costs shall be calculated by subtracting the inpatient portion computed in paragraph (3)(A)(2)(a) from the total average third year capital and operating costs computed in subsection (3)(A)(1).~~
- ~~(c) The remainder calculated in (2)(c) shall be adjusted for differences between the median costs per unit of outpatient activity, adjusted for variations in wages and case mix, in Maine and New England. This adjustment shall be made using data provided to the Office annually by Cleverley & Associates of Ohio. These data will be published in custom reports designed for the State of Maine that detail the average cost per ambulatory patient classification or APC, a unit of outpatient activity. These reports may be accessed through the Office and will be posted on the Office's website, which can be accessed through www.maine.gov.~~
- ~~(d) The final adjusted value for this subsection shall be the sum of the values calculated in paragraphs (3)(A)(2)(b) and (d).~~

~~(2)(3) If necessary, the product of the calculation performed in subsection (3)(A)(2) shall be further adjusted to correlate with the number of months the CIF is to apply to, should that number vary from twelve months.~~

~~(4) The amount calculated in subsection (3)(A)(3) shall be adjusted to reflect differences in the rate of growth in per capita income in Maine and the rate of growth in per capita health care expenditures using the most recent year for which data are available. The data used for this adjustment shall be as follows:~~

- ~~(a) Maine per capita health care expenditure data for the most recent year available, as published annually by the Office of the Actuary, Centers for Medicare and Medicaid Services, US Department of Health and Human Services. The data for the most recent year available shall be trended forward to the annual effective period using the national projections of rates of growth, by component of cost, used by the Office of the Actuary to annually project National Health Expenditure Accounts.~~

~~(b) Maine per capita income data for the annual effective period as published annually by the Bureau of Economic Analysis, US Department of Commerce.~~

~~The difference between the rate of growth in Maine per capita health care expenditures and the rate of growth in Maine per capita income shall be the percentage adjustment applied to the amount calculated in 9(A)(3). The product of this calculation shall be the Capital Investment Fund hospital component~~

~~(4)B. — The statute at 2 MRSA c. 5, section 102(3) requires that, for the first three years of operation, the non-hospital component of the Capital Investment Fund shall be at least 12.5% of the total Capital Investment Fund. The Office shall next determine the Capital Investment Fund amounts for non-hospital projects as follows:~~

~~[Value of the hospital component of the Capital Investment Fund, as calculated in subsection 3(A)] x (0.125) / (0.875)~~

~~C. — Within both the hospital and non-hospital components of the Capital Investment Fund, there shall be an allocation for large projects and small projects. Within each component, ten percent (10%) of the total Capital Investment Fund component shall be set aside for small projects; the remainder shall be allocated to large projects.~~

A. The Office shall determine the Capital Investment Fund for the transition period as follows:

- (1) The Office shall estimate statewide hospital operating expenses for 2009 by trending the most recent year's operating expenses, as filed by hospitals on standardized accounting templates with the Maine Health Data Organization pursuant to 22 MRSA ch. 1683, forward by the average increase in operating expenses over the most recent five year period for which data are available.
- (2) The estimate statewide hospital operating expenses for 2009 calculated in subsection (A)(1) above shall be multiplied by 0.31%. The product of this calculation shall be the CIF hospital component for the 2009 transition period.
- (3) The CIF hospital component calculated in subsection (A)(2) above shall be multiplied by 15% to determine the Hospital Small Project Amount. The remaining amount is the Hospital Large Project Amount.
- (4) The Office shall next determine the Capital Investment Fund amounts for non-hospital projects as follows:

[Value of the hospital component of the Capital Investment Fund, as calculated in subsection (A)(3)] x (0.125) / (0.875)

15% of this amount shall be the Non-Hospital Small Project Amount. The remaining amount is the Non-Hospital Large Project Amount

B. The Office shall calculate the value for the Capital Investment Fund for each effective period as follows:

(1) The Office shall estimate statewide hospital operating expenses for each year of the effective period by trending the most recent year's operating expenses, as filed by hospitals on standardized accounting templates with the Maine Health Data Organization pursuant to 22 MRSA ch. 1683, forward by the average increase in operating expenses over the most recent five year period for which data are available.

(2) The estimated statewide hospital operating expenses for each year of the effective period calculated in subsection (B)(1) above shall be added together and the sum shall be multiplied by 0.31%. The product of this calculation shall be the CIF hospital component for the effective period.

(3) The CIF hospital component calculated in subsection (B)(2) above shall be multiplied by 15% to determine the Hospital Small Project Amount. The remaining amount is the Hospital Large Project Amount.

(4) The Office shall next determine the Capital Investment Fund amounts for non-hospital projects as follows:

[Value of the hospital component of the Capital Investment Fund, as calculated in subsection (B)(3)] x (0.125) / (0.875)

15% of this amount shall be the Non-Hospital Small Project Amount. The remaining amount is the Non-Hospital Large Project Amount.

~~D. The Office will examine the results of the calculations performed in accordance with subsections (3)(B) and (3)(C) in light of two additional considerations, described below:~~

~~(1) The amount shall be examined for adequacy against, at a minimum, the criteria for the Capital Investment Fund set forth at 2 MRSA chapter 5 section 102(2). The Capital Investment Fund shall be further adjusted if the Office finds it does not adequately reflect the considerations listed below. The criteria include:~~

~~(a) The State Health Plan developed in accordance with 2 MRSA chapter 5 section 103;~~

~~(b) The opportunity for improved operational efficiencies in the state's health care system;~~

- ~~(c) The average age of the infrastructure of the state's health care system;~~
 - ~~(d) Technological developments and the dissemination of technology in health care; and~~
 - ~~(e) Unused balance remaining in the Capital Investment Fund from a prior year.~~
- ~~(2) The Office, at its discretion, may consult with one or more experts, as authorized by 2 MRSA §102(2), subject to the provisions of 1 MRSA §401, *et seq.*, to gain additional guidance regarding the appropriate value for the Capital Investment Fund or any of its individual components. Such experts will have knowledge of the issues of concern as demonstrated by their publication in peer reviewed journals and/or by their work or research experience. Such experts may not have a financial relationship with any potential applicant for approval under Maine's Certificate of Need Program, nor with any commercial or public payer who may be affected by a potential Certificate of Need proposal. If, after consultation with such experts, the Office concludes that the value of the Fund arrived at after performing the computations in subsection (C) is inappropriate, the value may be adjusted to reflect the expert guidance.~~
- ~~(3). The Office shall consult with the Advisory Council on Health Systems Development regarding the appropriate value for the Capital Investment Fund or any of its individual components. If, after such consultation, the Office concludes that the value of the Fund arrived at after performing the computations in subsection (C) is inappropriate, the value may be adjusted to reflect the guidance provided by the Advisory Council on Health Systems Development.~~
- E. ~~After carrying out the calculations and taking into consideration the criteria set forth in subsection (D), any expert advice sought and the recommendations received from the Advisory Committee on Health Systems Development, the Office shall conduct a public hearing on the proposed value of the Capital Investment Fund to solicit public comment.~~
- ~~(1) The Office shall provide notice of the public hearing by publication in the Kennebec Journal. The notice will include information regarding the time and place of the public hearing, as well as specify a deadline for receipt of written comments. The public hearing will be held between seventeen (17) and twenty four (24) days following publication of the notice.~~
- ~~(2) Notice shall also be provided to all persons who have requested notification by means of asking that their names be placed on a mailing~~

~~list maintained by the Office or this purpose. This notice shall be provided to all such persons between seventeen (17) and twenty four (24) days prior to the public hearing and shall include a brief description of the Capital Investment Fund, the manner in which it was derived including discussion of expert advice and recommendations from the Advisory Council on Health Systems Development received pursuant to subsection (D). The notice shall also include a description of the policy rationale underlying the Capital Investment Fund, as well as information regarding the time and place of the public hearing and deadline for submission of written comments.~~

- ~~(3) At the public hearing, the Office will accept comments from any interested person wishing to speak. The Office may arrange the schedule for the public hearing to allow specific constituency groups to be heard together in a single block of time. For example, a schedule may be set out that specifies that comment will first be taken from consumers, to be followed by payers, then providers, and so on. The Office may, at its discretion, limit the time any individual may be allowed for presentation of public comment.~~
- ~~(4) The Office will accept written comments from any interested person for a period of ten (10) days following the date of the public hearing.~~
- ~~(5) Within one hundred twenty (120) days of the close of the public comment period, the Office shall, after consideration of the comments received, issue a written notice of the final Capital Investment Fund. In that notice, the Office shall summarize the comments received and shall provide a response to those comments. If the Capital Investment Fund is inconsistent with any of the comments submitted for consideration, the Office shall provide a detailed statement of the reasons for the inconsistency.~~

4. Use and Operation of the Capital Investment Fund. Except as provided below, the Capital Investment Fund amounts, as issued by the Office, shall be used as a limit for ~~annual~~ resources ~~allocation allocated annually~~ under the Certificate of Need program by the Department of Health and Human Services. Hospital and nonhospital projects funded exclusively with public funds will be exempt from the resource allocation limits created by the Capital Investment Fund.
- ~~5. Maximum allowance for a Single Project in a Single Year. A maximum of \$2,000,000 shall be debited against the Capital Investment Fund level for any individual project in a single year. In the case of an extraordinary project, where the project's total costs exceed this maximum, the total cost of the project shall be allocated in equal amounts over multiple years, with no one allocation exceeding \$2,000,000.~~

~~A.6. — No Carry Forward. If, after all Certificate of Need approvals are made for a given annual effective period, the hospital component and/or the non-hospital component of the Capital Investment Fund has fund allowances remaining, those allowances~~

A. Outstanding Debits From Previous CIFs. Outstanding debits from projects approved under previous CIFs will be debited as follows:

- (1) Outstanding debits from projects approved under the 2007 CIF. Any outstanding debit from projects approved the 2007 CIF will be debited against the 2009 CIF after projects approved under the 2009 CIF are approved and debited. Further outstanding debits, if any, will be debited against the CIF for the following effective period.
- (2) Projects approved under the 2008 CIF. The sum of the debits from projects approved under the 2008 CIF shall be reduced by \$7,048,205. The remaining amount shall be debited in the following manner and sequence:
 - a. Against the remaining 2008 CIF so as to fully deplete the 2008 CIF.
 - b. Against the remaining amount in the 2009 CIF, if any, after performing the debit under subparagraph (A)(2)(a), so as to fully deplete the 2009 CIF.
 - c. 45% of the remainder shall be debited against the CIF for the 2010-2012 effective period. The remaining amount in the CIF for the 2010-2012 effective period shall be available for projects reviewed during the 2010-2012 effective period.
 - d. The remaining amount shall be debited against the CIF for the 2013-2015 effective period. The remaining amount in the CIF for the 2013-2015 effective period shall be available for projects reviewed during the 2013-2015 effective period.

B. Transition Period. Projects reviewed during the Certificate of Need Unit's 2009 review cycle shall be debited against the CIF for the transition period. In the event that:

- (1) there is an unspent balance from the Hospital Large Amount, it may be used by projects reviewed under the Hospital Small Project Amount;
- (2) there is an unspent balance from the Hospital Small Project Amount, it may be used by projects reviewed under the Hospital Large Project Amount;
- (3) the total costs of projects approved exceed the CIF for the transition period, the difference shall be debited against the CIF for the next effective period, with 15% of the outstanding amount being debited against the small component and 85% debited against the large component.

- C. Effective Periods, starting after December 31, 2009.
- (1) A project's CIF debits will be fully debited against the CIF in the year in which the project is approved.
 - (2) In no event may the total CIF debits of approved hospital projects during the effective period exceed the Hospital component for the effective period.
 - (a) In the event that there is an unspent balance from the Hospital Large Amount, it may be used by projects reviewed under the Hospital Small Project Amount. In the event that there is an unspent balance from the Hospital Small Project Amount, it may be used by projects reviewed under the Hospital Large Project Amount.
 - (b) Any unused Hospital component at the end of the effective period shall lapse and shall not carry forward into the following effective period.
 - (3) In no event may the total ~~third-year operating costs~~ CIF debits of approved non-hospital projects during the effective period exceed the Non-Hospital component for the effective period.
 - (a) In the event that there is an unspent balance from the Non-Hospital Large Amount, it may be used by projects reviewed under the Non-Hospital Small Project Amount. In the event that there is an unspent balance from the Non-Hospital Small Project Amount, it may be used by projects reviewed under the Non-Hospital Large Project Amount.
 - (b) Any unused Non-Hospital component at the end of the effective period shall lapse and shall not carry forward into the following ~~annual~~ effective period.
 - (4) -In no event may
 - (a) Balances in the Non-Hospital component be used by hospital projects.
 - (b) Balances in the Hospital component be used by non-hospital projects.
- D. The costs of subsequent reviews of previously approved projects will be debited against the CIF in effect at the time that the subsequent review is approved.